ing her key to the person in charge of the vaults. Under such conditions we see no reason to depart from the ordinary rule that where a bailee receives property and fails to return it the presumption arises that the loss was due to his negligence, and the law imposes on him the burden of showing that he exercised the degree of care required by the nature of the bailment. Cumins *v.* Wood, 44 Ill. 416, 92 Am. Dec. 189; Bennett *v.* O'Brien, 37 Ill. 250. To call upon the plaintiff, under such circumstances to prove some specific act of negligence by which her money was lost, and which she must necessarily prove by defendant's employees, would impose upon her a practically impossible burden."

Bailments—Box Containing Will—"Special Deposit."—In Sawyer *v.* Old Lowell Nat. Bank, 119 N. E. 825; the Supreme Judicial Court of Massachusetts held that where testatrix, when living, delivered to a bank a tin box about a foot long, seven inches wide and six or seven inches deep, having her name scratched on it in two or three places and containing her will, acceptance of the box, without disclosure of what it contained, did not make the bank responsible as bailee of the will.

The court also held that a tin box, gratuitously stored in a national bank's vault for the owner's accommodation, can not be regarded as a "special deposit" the handling of which would come within the regular line of banking business, like money, stocks, bonds and other securities. The court said:

"Sarah R. Spalding died on shipboard on April 6, 1902, while returning from Jamaica. Shortly thereafter a search was begun for a will which it was known she had at one time executed. One Charles H. Coburn called at the banking rooms of the defendant, where Miss Spalding had hired a safe deposit box and kept a deposit account. He had the key of the safe deposit box, and its contents were examined in his presence, but no will was found therein.

"Mr. Coburn was duly appointed administrator of Miss Spalding's estate on May 27, 1902. He administered the estate, had his final account allowed May 25, 1905, and distributed the personal estate among the next of kin in pursuance of a decree issued by the Probate Court on June 7, 1905.

"In February, 1910, two clerks in the employ of the defendant were engaged in removing from the bank vault certain old books and records, preparatory to installing new steel shelving. On the floor, under one of the old shelves, they found a rectangular tin box about twelve inches long, seven inches wide and six or seven inches deep. The name Sarah R. Spalding was scratched thereon in two or three places, and when the box was opened there was found therein the will of Miss Spalding and some other papers and family 'keepsakes'

of no intrinsic value. The president of the bank filed the will in the probate office and notified the attorney who had acted for Mr. Coburn. This will was duly allowed March 14, 1910, and the plaintiff was appointed administrator with the will annexed. He brought this action of tort or contract to recover damages, claiming, among other elements, the expenses incident to the administration and the value of the real estate which had been sold by the heirs of Miss Spalding prior to the finding of her will.

"The case declared on, and tried in the Superior Court, was the alleged breach of duty by the defendant, as bailee, in failing to produce or deliver the box containing the last will of Sarah R. Spalding. We assume, for the purpose of this case, that the plaintiff is a proper party to sue in the right of the testatrix for some of the elements of alleged damage, and that the remedy provided by R. L. chap. 135, § 14, in favor of persons aggrieved by the unreasonable neglect of the possessor of a will to deliver it into the Probate Court is not exclusive. Nevertheless the plaintiff has failed to establish the essential fact that the defendant ever became bailee of the will. Presumably it could be inferred from the evidence that the tin box was left at the bank for safe-keeping, but there is nothing in the record to indicate the defendant knew or reasonably ought to have known that Miss Spalding's will was contained in it. Acceptance of the box would not make the bank responsible for its contents. As was said in Scollans *v.* Rollins (179 Mass. 346, 354, 60 N. E. 983, 985, 88 Am. St. Rep. 386), where a sealed envelope containing bonds was delivered: '* * * If the certificates had been handed to him in a sealed envelope they would not have been intrusted to him, and opening the envelope would have been like a carrier's breaking bulk. The modern decisions have followed the ancient suggestion that in such cases there is no delivery of the contents of the inclosure.' See, also, Belknap et al. *v.* Nat. Bank of North America, 100 Mass. 376, 381, 97 Am. Dec. 105.

"As the defendant never became custodian of the will of Miss Spalding it is unnecessary to consider whether it would be authorized under the National Bank Act (Acts Cong., June 3, 1864, chap. 106, 13 Stat. 99) to accept a will for safe-keeping and would be legally liable for the consequences due to its failure to deliver the will according to directions. See Myers *v.* Exchange Nat. Bank, 96 Wash. 244, 164 Pac. 951, L. R. A., 1918A, 67; Dresser *v.* Traders' Nat. Bank, 165 Mass. 120, 42 N. E. 567; and see now Federal Reserve Act of December 23, 1913, chap. 6, § 11-k, 38 Stat. 261, U. S. Comp. 1916, § 9794; First Nat. Bank *v.* Union Trust Co., 244 U. S. 416, 37 Sup. Ct. 734, 61 L. Ed. 1233.

"The plaintiff in his supplemental brief argues that the defendant bank was bailee of the tin box, as distinguished from its contents. It is apparent from the record, however, that the bailment claimed

in the pleadings and at the trial was that of the will and the damages contended for could not arise from the loss of the box itself. Even if the question were now open to the plaintiff, it is difficult to see how an empty tin box, gratuitously stored in the bank vault for the accommodation of the owner could be regarded as a 'special deposit' the handling of which would come within the regular line of banking business, like money, stocks, bonds and other securities. American Nat. Bank *v.* E. W. Adams & Co., 44 Okla. 129, 143 Pac. 508, L. R. A., 1915B, 542, note; Foster et al. *v.* Essex Bank, 17 Mass. 479, 9 Am. Dec. 168."

Indemnity Insurance—Refusal to Defend Suit.—In Western Indemnity Company *v.* Walker-Smith Company (Tex. Civ. App.), 203 S. W. 93, it was held, that where an indemnity company refused to defend a suit as specifically agreed in a separate paragraph of the policy, and insured had employed attorneys and others to defend, insured could recover obligations so incurred, although not yet paid, regardless of a clause in the policy, providing that no action should lie against the insurer except to recover money actually expended.

The court said:

"As already shown, appellant had, by the second clause of the contract or policy unqualifiedly obligated and bound itself to defend the suits brought by Schroeder and Henry against appellee, and that appellant had failed and refused to defend said suits, as it had obligated itself to do. This being true, it was incumbent upon appellee, Walker-Smith Company, to incur the attorney's fees for which it sued and recovered in this cause. Since appellee's suit against appellant was not one to recover money actually expended by it in satisfaction of a claim which resulted from injuries caused by reason of the ownership and use of said automobile truck, but was a suit only to recover from appellant the amount of attorney's fees which it had necessarily incurred, because appellant had breached its contract, and for which appellee was liable, appellee was clearly entitled to recover, and it was not necessary that the fees sued for should be actually paid to enable it to recover; but when it established that it was obligated to pay said fees, and that the same were reasonable, the liability of appellant to repay the expenses necessarily incurred by appellee, because of the breach of the contract by appellant had arisen, and appellee's cause of action had accrued. Lowe *v.* Fidelity & Casualty Co., 170 N. C. 445, 87 S. E. 250; South Knoxville Brick Co. *v.* Surety Co., 126 Tenn. 402, 150 S. W. 92, Ann. Cas., 1913E, 107; Royal Indemnity Co. *v.* Schwartz, 172 S. W. 581.

"The so-called no-action clause of the policy relied upon by appellant as a defense to appellee's cause of action has no application to the issues involved in this clause. The contention of appellant reduced to its final analysis is that it was the intention of the con-